

**A RESOLUTION BY PUBLIC SAFETY AND LEGAL ADMINISTRATION
COMMITTEE**

A RESOLUTION AUTHORIZING [i] THE SETTLEMENT OF A LAWSUIT BY ALFRED BOYAJIAN AGAINST THE CITY OF ATLANTA RELATING TO SEWER REPAIRS ON THE PLAINTIFF'S PROPERTY, IN THE TOTAL AMOUNT OF \$250,000; [ii] THE CITY ATTORNEY TO EXECUTE ANY NECESSARY SETTLEMENT AGREEMENT TO EFFECTUATE THE SETTLEMENT; AND [iii] FOR OTHER PURPOSES.

BACKGROUND:

On December 22, 2000, the Plaintiff, Alfred Boyajian, filed suit against the City asserting the following claims against the City: [i] breach of contract; [ii] interference with enjoyment of property and trespass to real property; [iii] abuse of entry onto property; [iv] nuisance; [v] fraud; [vi] inverse condemnation; [vii] damage to the peace and happiness of the plaintiff; and [viii] attorneys' fees.

The lawsuit concerned numerous damages to Plaintiff's residential property caused by the City when it entered the property to repair a ruptured sewer line/manhole adjacent to Nancy Creek, which ran behind the property.¹

The Plaintiff's property consists of approximately 3.3 acres of land, located in a very affluent section of Buckhead, not too far from the Governor's mansion.

The Plaintiff (supported by an expert report) alleged damages in excess of \$900,000;

¹ The Plaintiff alleged that: [i] the City's progress in making the repairs was unduly lengthy due to inadequacies and incompetencies in the City's means and methods of repair, as well as its Public Works employees; [ii] the City worked outside the bounds of any temporary easement or right of way area granted to it; [iii] the City brought out onto the Plaintiff's property 6 separate pieces of heavy machinery, each weighing from 24,000 to 52,000 pounds; [iv] the City and the machinery destroyed lighting systems, a bridge and many trees, cracked a driveway and swimming pool and changed the topography of Plaintiff's property, [v] the City cut portions of Plaintiff's property adjacent to the Nancy Creek stream bed; [vi] the City placed on the property over 471 tons of fist-sized granite rock, 14 tons of football-sized rip-rap, 2 tons of white washed sand and 2 truckloads of concrete, and did not remove such materials, changing the hydrological characteristics and preventing the Plaintiff from growing grass or otherwise enjoying the property; [vii] subsequent to the repair of the sewer/manhole, the City simply abandoned the site, with virtually no attempt at remediation.

On June 13, 2003, the City and Plaintiff mediated this case and reached a tentative settlement agreement of \$250,000.

The City has determined that it is desirable and in its best interests to settle the lawsuit and pay the Plaintiff the sum of \$250,000;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the City Attorney is authorized to settle the case of Alfred Boyajian v. City of Atlanta; Case No. 2000-CV-32159; Superior Court of Fulton County, Georgia, in the total amount of \$250,000;

BE IT FURTHER RESOLVED THAT the Chief Financial Officer is authorized to pay to the Plaintiff a total sum of \$250,000 to be paid from Account No. 2521529017Q38101, on behalf of the City, in exchange for the Plaintiff's execution and delivery to the City of a Settlement Agreement and a filed Notice of Voluntary Dismissal With Prejudice dismissing the lawsuit;

BE IT FURTHER RESOLVED THAT the City Attorney is authorized, on behalf of the City, to execute the Settlement Agreement with the Plaintiff;

BE IT FURTHER RESOLVED THAT the Settlement Agreement will not be binding upon the City and the City will incur no liability under it, until it has been executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney as to form, duly executed by the Plaintiff and delivered to him.